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UNITED STATES CIVIL SERVICE COMMISSION

INFORMATION CONCERNING POLITICAL ASSESSMENTS AND PARTISAN ACTIVITY

OF FEDERAL OFFICEHOLDERS AND EMPLOYEES

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INTRODUCTION.

The present political-activity rule was promulgated by the President on June 3, 1907. After it had been in effect nearly a year the Commission addressed a letter to the President on March 25, 1908, from which the following is an extract:

"The Commission in recommending punishments for violations of subdivision 1 of Civil Service Rule I has heretofore been guided by the fact that the rule was one only adopted in June, 1907, and that while the President's instructions prohibiting political activity on the part of competitive classified employees have been public ever since 1902, yet in actual practice the effective and thoroughgoing enforcement of the President's instructions in this connection has only dated from the adoption of the rule in June last, which gave the Civil Service Commission the right to investigate and report on charges of improper political activity on the part of those in the competitive classified service. For this reason the Commission has heretofore been lenient in recommending punishments; but a sufficient time has now elapsed for us to assume that the civil-service rules are understood throughout the service, and we believe, therefore, that the time has also come for a somewhat greater degree of severity in the penalty inflicted, at least in aggravated cases. We recommend, therefore, that the several Departments be requested to publish to their employees in the competitive classified service the fact that any man violating the provisions of the rule in question renders himself liable to punishment by removal. We desire that the subordinates in the several Departments be acquainted with this recommendation, so that in the event of any misconduct by them in future the Commission may feel at liberty to recommend their removal."

The President, on March 27, 1908, directed each head of Department to have this portion of the Commission's letter printed and brought to the attention of subordinates.

It is the duty of the Commission to see that the provisions of the civil-service act and rules are strictly enforced, and it will employ every legitimate and available means to secure the prosecution and punishment of persons who may violate them. The Commission requests any person having knowledge of any such violation to lay the facts before it, that it may at once take action thereupon.

INFORMATION CONCERNING POLITICAL ASSESSMENTS AND PARTISAN ACTIVITY OF FEDERAL OFFICEHOLDERS AND EMPLOYEES.

I. POLITICAL ACTIVITY OF COMPETITIVE EMPLOYEES.

1. CIVIL SERVICE RULE I, SECTION 1, provides, in part, as follows:

"Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns."

2. Constitutionality.—It has sometimes been urged by employees violating this provision of the rule that such a rule is violative of the constitutional right of free speech and other similar rights. In a Massachusetts case arising under a regulation governing the police force of the city of New Bedford, the Supreme Judicial Court of Massachusetts, in the case of McAuliffe *v.* Mayor, etc., of the city of New Bedford (155 Mass., 216; 29 N. E., 517), speaking through Holmes, J., said:

> One answer to this argument, admitting that the statute does not make the mayor the final judge of what cause is sufficient and that we have a right to consider it, is that there is nothing in the Constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant can not complain, as he takes the employment on the terms which are offered him. On the same principle the State may impose any reasonable condition upon holding offices within its control. This condition seems to be reasonable, if that be a question open to revision here.

3. Definition of political activity and scope of rule.—Activity in politics includes any activity pertaining to or connected with a party or parties controlling or seeking to control Government in the Nation, or in a State, county, or municipality. Any one of two or more bodies of people contending for antagonistic or rival governmental policies or measures is a political party. The fact that a campaign may not mean affiliation with any of the great national political parties or that the party may be a reform party is not material, for the reason that one of the primary purposes of the rule forbidding political activity on the part of competitive classified employees is to require them, in their political as well as their official actions, to avoid any act or display of partisanship on any pending political issue which might cause public scandal or unfavorable comment and offend persons who have relations with them in their official capacity. For an employee of the Government, who is the paid servant of all citizens of all political faiths, publicly to display his partisanship with respect to any pending issue is detrimental to the service; an employee could not, of course, be permitted to support such an issue and another employee forbidden to oppose it, and his partisanship, while pleasing to some, would be offensive to others. It is well known that reform or so-called nonpartisan campaigns are frequently more bitterly contested than campaigns conducted on strictly partisan lines, and however meritorious may be the reform sought to be attained, if the question is a political one a competitive employee may not take an active part in its discussion or solution.

4. Temporary employees—Leave of absence.—Temporary or emergency employees, substitutes, and persons on furlough or leave of absence, with or without pay, are subject to the rule. While an employee is in the competitive classified service and his name is carried on the rolls the civil-service rules and regulations apply to him and he must refrain from their violation, even though he may not be rendering actual service to the Government. It is not permis-

sible for an employee to take leave of absence for the purpose of working for a political committee or organization or of becoming a candidate for an elective office with the understanding that he will resign his competitive position if nominated or elected.

5. Unclassified laborers.—Under the regulations for the navy-yard service approved December 7, 1912, unclassified laborers are made subject to dismissal for political activity in the same manner as are competitive classified employees. Similar instructions have been issued by other departments placing the same limitations in regard to political activity on laborers in the unclassified service as are appled to competitive employees.

6. Conventions.—The rule is held to forbid candidacy for or service as delegate, alternate, or proxy in any political convention, or as an officer or employee thereof. It does not prohibit mere attendance as a spectator, but the person so attending must not take any part in the convention or in the deliberations or proceedings of any of its committees and must refrain from any public display of partisanship or obtrusive demonstration or interference or any activity which might cause scandal or unfavorable comment.

7. Primaries—Caucuses.—An employee may attend a primary meeting, mass convention, beat convention, caucus, and the like and may cast his vote on any question presented, but he may not pass this point in participating in its deliberations. He may not act as an officer of the meeting, convention, or caucus, may not address it, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part therein.

8. Committees.—Service on or for any political committee or similar organization is prohibited. An employee may attend as a spectator any meeting of a political committee to which the general public is admitted, but must refrain from activity as indicated in the preceding paragraphs.

9. Clubs.—Employees may be members of political clubs, but it is improper for them to be active in the organization of such a club, to be officers of the club, or members or officers of any of its committees or act as such, or to address a political club. Service as a delegate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club, but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances.

10. Meetings.—Service in preparing for, organizing, or conducting a political meeting or rally, addressing such a meeting, or taking any other active part therein, except as a spectator, is prohibited.

11. Expression of opinions.—The right to express privately his opinions on all political subjects is reserved to the employee by the rule. He must confine himself to the private expression of his views and must refrain from political discussions or conferences while on duty or in public places; he must not canvass a district or solicit political support for any party, faction, candidate, or measure.

12. Activity at the polls.—An employee has the right to vote as he pleases, and to exercise this right free from interference, solicitation, or dictation by any fellow employee or superior or any other person. It is his duty to avoid any offensive activity at primary and regular elections, and he must refrain from soliciting votes, assisting voters to mark ballots, or in getting out the voters on registration and election days, acting as the accredited checker, watcher, or challenger of any party or faction, assisting in counting the vote, or engaging in any other activity at the polls except the marking and depositing of his own ballot.

13. Election officers.—An employee may not seek appointment or election to or serve in any position of election officer, except in States or positions refusal to serve in which is penalized by the election law of the State, and in the latter case he must not seek or solicit appointment or election, and if appointed without his solicitation must act impartially and without exhibiting partisan feelings or giving any appearance of partisan activity.

14. Newspapers—Publication of letters or articles.—An employee may not publish or be connected editorially, managerially, or financially with any political newspaper, and may not write for publication or publish any letter or article, signed or unsigned, in favor of or against any political party, candidate, faction, or measure.

15. Liquor question.—Activity in campaigns concerning the regulation or suppression of the liquor traffic is prohibited. An employee may be a member but not an officer of a club, league, or other organization which takes part in such a campaign. The rule does not exclude the employee from participating in discussion where no political issue is involved or from making an address on any moral or ethical subject, but when two or more parties or factions become engaged in a contest for rival or antagonistic measures or policies of control or regulation a political question is presented.

16. Contributions.—An employee may make political contributions to any committee, organization, or person not employed by the United States, but may not under the rule solicit, collect, receive, or otherwise handle or disburse the same. (See provisions of the Criminal Code, discussed in paragraphs 44 to 56.)

17. Candidacy for or holding local office.—Candidacy for a nomination or for election to any national, State, county, or municipal office is not permissible, except as stated in the following paragraphs:

18. Executive order of January 17, 1873:

Whereas it has been brought to the notice of the President of the United States that many persons holding civil office by appointment from him or otherwise under the Constitution and laws of the United States while holding such Federal positions accept offices under the authority of the States and Territories in which they reside, or of municipal corporations, under the charters and ordinances of such corporations, thereby assuming the duties of the State, Territorial, or municipal office at the same time that they are charged with the duties of the civil office held under Federal authority:

And whereas it is believed that, with but few exceptions, the holding of two such offices by the same person is incompatible with a due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience, and often results in detriment to the public service; and, moreover, is not in harmony with the genius of the Government:

In view of the premises, therefore, the President has deemed it proper thus and hereby to give public notice that, from and after the 4th day of March, A. D. 1873 (except as herein specified), persons holding any Federal civil office by appointment under the Constitution and laws of the United States will be expected, while holding such office, not to accept or hold any office under any State or Territorial government, or under the charter or ordinances of any municipal corporation; and, further, that the acceptance or continued holding of any such State, Territorial, or municipal office, whether elective or by appointment, by any person holding civil office as aforesaid under the Government of the United States, other than judicial offices under the Constitution of the United States, will be deemed a vacation of the Federal office held by such person, and will be taken to be and will be treated as a resignation by such Federal officer of his commission or appointment in the service of the United States.

The offices of justices of the peace, of notaries public, and of commissioners to take the acknowledgment of deeds, of bail, or to administer oaths, shall not be deemed within the purview of this order and are excepted from its operation, and may be held by Federal officers.

The appointment of deputy marshals of the United States may be conferred upon sheriffs or deputy sheriffs. And deputy postmasters, the emoluments of whose office do not exceed $600 per annum, are also excepted from the operation of this order and may accept and hold appointments under State, Territorial, or municipal authority, provided the same be found not to interfere with the discharge of their duties as postmaster.[1] Heads of departments and other officers of the Government who have the appointment of subordinate officers are required to take notice of this order, and to see to the enforcement of its provisions and terms within the sphere of their respective departments or offices and as relates to the several persons holding appointments under them, respectively.

19. Executive order of January 28, 1873:

Inquiries having been made from various quarters as to the application of the Executive order issued on the 17th of January relating to the holding of State or municipal offices by persons holding civil offices under the Federal Government, the President directs the following reply to be made:

It has been asked whether the order prohibits a Federal officer from holding also the office of an alderman or of a common councilman in a city, or of a town councilman of a town or village, or of appointments under city, town, or village governments. By some it has been suggested that there may be distinction made in case the office be with or without salary or compensation. The city or town offices of the description referred to, by whatever names they may be locally known, whether held by election or by appointment, and whether with or without salary or compensation, are of the class which the Executive order intends not to be held by persons holding Federal offices.

It has been asked whether the order prohibits Federal officers from holding positions on boards of education, school committees, public libraries, religious or eleemosynary institutions incorporated or established or sustained by State or municipal authority. Positions and service on such boards and committees, and professorships in colleges, are not regarded as "offices" within the contemplation of the Executive order, but as employments or service in which all good citizens may be engaged without incompatibility and in many cases without necessary interference with any position which they may hold under the Federal Government. Officers of the Federal Government may therefore engage in such service, provided the attention required by such employment does not interfere with the regular and efficient discharge of the duties of their office under the

[1] See paragraph 20.

Federal Government. The head of the department under whom the Federal office is held will in all cases be the sole judge whether or not the employment does thus interfere.

The question has also been asked with regard to officers of the State militia. Congress having exercised the power conferred by the Constitution to provide for organizing the militia, which is liable to be called forth to be employed in the service of the United States, and is thus, in some sense, under the control of the General Government, and is, moreover, of the greatest value to the public, the Executive order of the 17th January is not considered as prohibiting Federal officers from being officers in the militia in the States and Territories.

It has been asked whether the order prohibits persons holding office under the Federal Government being members of local or municipal fire departments; also, whether it applies to mechanics employed by the day in the armories, arsenals, and navy yards, etc., of the United States. Unpaid service in local or municipal fire departments is not regarded as an office within the intent of the Executive order, and may be performed by Federal officers, provided it does not interfere with the regular and efficient discharge of the duties of the Federal office, of which the head of the Department under which the office is held will in each case be the judge. Employment by the day as mechanic or laborer in the armories, arsenals, navy yards, etc., does not constitute an office of any kind, and those thus employed are not within the contemplation of the Executive order.[1] Master workmen and others who hold appointments from the Government or from any Department, whether for a fixed time or at the pleasure of the appointing power, are embraced within the operation of the order.

20. Application of political activity rule.—The Civil Service Commission has no function in the interpretation or enforcement of the above orders of January 17 and 28, 1873, except in so far as they relate to the rule forbidding political activity by competitive classified employees and unclassified laborers. These employees, with some exceptions, are prohibited from holding any elective office or any office filled through appointment by an elected officer, board, or council. The provision of the Executive order of January 17, 1873, excepting from its prohibitions to hold local office "deputy postmasters, the emoluments of whose office does not exceed $600 per annum," is modified and amended by the subsequent Executive orders placing fourth-class postmasters in the competitive classified service and thereby subjecting them to the provision of section 1 of Rule I as to political activity, and further by section 4 of the regulations agreed to by the Department and the Commission and approved by the President on November 25, 1912, which prohibits political activity by fourth-class postmasters, and applies to all offices of the fourth class of whatever compensation.[2]

21. Excepted offices.—Persons in the executive civil service may be appointed to certain other positions which are held to be excepted from the operation of the order of January 17, 1873, provided the consent of the Department under which the Federal office is held is obtained and the political activity rule is not violated, viz:

A competitive employee may become a candidate for and serve in the elective office of delegate to a State constitutional convention.

Employees on Indian reservations may be appointed under State authority as deputy sheriffs or constables, as the requirements of the service demand, this action being necessary, as on all reservations which have been allotted and opened for settlement conditions arise wherein the Federal Government has sole jurisdiction over certain offenses and the State has jurisdiction over other offenses, and where there can be merged in one person the joint authority of a Federal and State officer, a serious difficulty in the administration of justice is removed.

There is no objection to the holding of a small-salaried position in a municipal fire department.

The position of member of a municipal civil service commisson may be held by an employee, in analogy with the exceptions contained in the order of 1873 with regard to school officials and in view of its nonpolitical character.

An employee may become a candidate for or hold any of the local offices excepted from the prohibitions of the Executive order of January 17, 1873, provided that he does not violate section 1 of Rule I, prohibiting the use of his official authority or influence in political matters, and provided further that he avoids neglect of duty and any action that would cause public scandal or semblance of coercion upon his subordinates or fellow employees, in furthering his candidacy for election or appointment or in performing the duties of the office if his candidacy be sucessful.

22. Eligibles holding local office.—Eligibles who are holding a local office not excepted from the prohibitions of the order of 1873 must on selection and acceptance of any position in the competitive classified service or of unclassified

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[1] See paragraphs 5 and 24.
[2] See sec. 160, Postal Laws and Regulations.

laborer immediately resign the local office. The holding of a local office not excepted from the prohibitions of the order of 1873 is an absolute disqualification for appointment, and unless applicants are willing immediately to resign the local office in the event of selection for appointment their applications can not be considered.

23. Executive order of June 26, 1907:

Whereas by an Executive order of June 13, 1907, officers and employees of the Forest Service and Biological Survey in the Department of Agriculture were authorized to accept appointments to certain State and Territorial positions, and it appears that the work of that Department would be facilitated by an extension of the provisions thereof, I desire to give public notice that hereafter, with the approval of the Secretary of Agriculture, other officers and employees of that Department are authorized to hold State and Territorial positions, and State and Territorial officials, unless prohibited by law, may be permitted to receive appointments under the Department of Agriculture, when in either case the Secretary of Agriculture deems such employment necessary to secure a more efficient administration of the duties of his Department.

24. Executive order of May 14, 1909:

Whenever in the opinion of the Secretary of the Navy a strict enforcement of the provisions of section 1, Rule I, of the civil-service rules would influence the result of a local election the issue of which materially affects the local welfare of the Government employees in the vicinity of any navy yard or station the Civil Service Commission may, on recommendation of the Secretary of the Navy, and after such investigation as it may deem necessary, permit the active participation of the employees of the yard or station in such local election. In the exercise of the privilege which may be conferred hereunder, persons affected must not neglect their official duties nor cause public scandal by their activity.

25. Practice under order of May 14, 1909.—This order does not operate to repeal that of January 17, 1873, so far as it applies to navy-yard employees, but merely provides for a waiver of the political-activity rule. It is not the practice of the Department to recommend or of the Commission to grant under this order permission to bosses or head men, by whatever designation known, or to any person whose recommendations have, by regulation, any influence upon the employment, promotion, laying off, or discharge of other employees, to become candidates for local office, as in such case there would be temptation to use the power of their official positions to secure election. The order applies only to local municipal elections, and does not apply to localities where the proportion of Government employees to total population is negligible.

26. Executive order of August 4, 1909:

Whereas by an Executive order of January 17, 1873, it was declared that "persons holding any Federal civil office by appointment, under the Constitution and the laws of the United States will be expected, while holding such office, not to accept or hold any office under any State or Territorial government or under the charter or ordinances of any municipal corporation." I deem it proper to give public notice that hereafter, in order to secure a more efficient administration of the work of the Bureau of the Census, certain State and county officials, such as sheriffs, deputy sheriffs, tax collectors, assessors, deputy assessors, school commissioners, superintendents, etc., may accept appointments as special agents for the collection of statistics of cotton.

27. Executive order of February 14, 1912:

Employees of the executive civil service permanently residing in the following incorporated municipalities adjacent to the District of Columbia will not be prohibited from becoming candidates for or holding municipal office in such corporations:

In Maryland—Takoma Park, Kensington, Garrett Park, Chevy Chase, Glen Echo, Hyattsville, Mount Rainier.
In Virginia—Falls Church, Vienna, Herndon.

In the exercise of the privilege granted by this order officers and employees must not neglect their official duties and must not engage in national, State, or county political activity in violation of the civil-service rules, and if there is such violation the head of the Department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

This order, which is recommended by the Civil Service Commission, is based upon the facts that a considerable number of the residents and taxpayers of the towns mentioned are employed in the Government service; that service as municipal officers in such towns should in no way involve general partisan political activity, and that the principle of home rule and local self-government justifies such participation.

28. Scope of order of February 14, 1912.—The exception made in this case to section 1 of Rule I and the Executive order of January 17, 1873, does not extend to municipalities other than those specifically named, and Government employees residing in other towns than these who desire to become candidates for local office or to take an active part in political campaigns are not permitted by this order to do so.

29. Executive order of August 24, 1912:

The temporary office of moderator of a town meeting and offices of a like character are hereby excepted from the operation of the Executive order of January 17, 1873, prohibiting persons in the Federal civil service from holding office under the charter or ordinances of any municipal corporation, and may be held by persons in the executive civil service. Membership in the civil service ought not to prevent an employee from taking part in the ordinary municipal affairs of the community in which he lives, where that part does not involve permanent service but only such a temporary duty as that of acting chairman of a municipal business meeting, where such service is not compensated by any salary or other emolument, and where the attention required by such service does not interfere with the regular and efficient discharge of the duties of the Federal office held.

In the exercise of the privilege granted by this order officers and employees must not neglect their official duties and must not engage in national, State, or county political activity in violation of the civil-service rules; and in seeking the local offices named or in performing the duties thereof employees shall not use the authority or influence of their Federal positions nor take an active part in political management or in political campaigns.

30. Other forms of activity.—Among other forms of political activity which are prohibited by the rule are the distribution of campaign literature, badges, or buttons, the wearing of such badges or buttons while on duty, the circulation but not the signing of political petitions (including initiative and referendum, recall, and nominating petitions), and general political leadership or becoming prominently identified with any political movement, party, or faction or with the success or failure of any candidate for election to public office.

31. Candidacy for presidential positions.—Where a competitive employee seeks promotion in the way of appointment or transfer to an unclassified office, there is no objection to his becoming a candidate for such an office, provided the consent of his Department is obtained, and provided he does not violate section 1 of Rule I, prohibiting the use of his official authority or influence in political matters, and provided further that he avoids neglect of duty and any action that would cause public scandal or semblance of coercion upon his fellow employees or upon those over whom he desires to be placed in the position to which he seeks appointment.

A competitive classified employee may circulate a petition or seek indorsements for his own appointment to an unclassified position, subject to the qualifications above stated, and he may, as an individual, sign a petition or recommend another for such an appointment; but he may not circulate a petition or solicit indorsements, recommendations, or support for the appointment of another person to such a position, whether or not such other person is a fellow employee or one not at the time in the Government service.

In case an unofficial primary or election is held for the purpose of determining the popular choice for the unclassified office, a competitive employee may permit his name to appear upon the ticket, but he may not solicit votes in his behalf at such a primary or election, or in any other manner violate section 1 of Rule I. He may vote and express privately his opinions, but may not solicit votes or publicly advocate the candidacy or election of himself or any other person.

32. Signing of petitions.—As stated in the preceding paragraph, it is permissible for a competitive classified employee, as an individual, to sign a petition or recommend another for appointment to an unclassified position. He is not permitted to sign such a petition as a Government employee or in any other way to use his official authority or influence to advance the candidacy of any person for election or appointment to any office. While competitive employees are permitted to exercise the right as individuals to sign a petition favoring a candidate for any office, they may not do so as Government employees or as a group or association of Government employees.

33. Reinstatement.—The conditions under which reinstatement may be authorized where an employee resigns to engage in political activity or to become a candidate for elective office are indicated in the following extract from a letter of the President dated December 26, 1911:

I am of opinion that, in accord with the spirit of our institutions in recognizing the fundamental right of citizenship, a citizen who resigns to become a candidate for office and pursues a course free from coercion, bribery, or other scandalous or unlawful conduct should not thereby be prejudiced by being refused reinstatement within the period of eligibility prescribed by the rules; nor do I think any distinction should be made between the person who resigns and becomes a candidate and one who resigns, not to be a candidate, but to manage or take part in a political campaign for a party. If he wishes to run the risk of finding an Executive who will reinstate him and he resigns in order to avoid a violation of the rules as to participation in electoral contests by members of the

classified service, I do not see why it should demoralize the service to allow him to resign and run the risk of securing the approval of his reinstatement by the Executive within a year after he has resigned.

In a similar case the President had stated previously: "I do not mean to say that the circumstances under which one leaves a Department and the purpose for which it is done might not affect the right to reinstatement."

If one resigns not merely to escape punishment for political activity prior to resignation, but without delinquency or misconduct and to avoid violation of the rule, and is guilty of no scandalous or unlawful conduct in his activity after resignation, his reinstatement may be authorized.

II. POLITICAL ACTIVITY OF PRESIDENTIAL OFFICERS AND INCUMBENTS OF UNCLASSIFIED AND EXCEPTED POSITIONS.

34. Early restrictions on unclassified officers.—On February 2, 1801, in a letter to Thomas McKean, President-elect Jefferson wrote:

One thing I will say, that as to the future interference with elections, whether of the State or General Government, by officers of the latter should be deemed cause of removal. The constitutional remedy by the elective principle becomes nothing if it may be smothered by the enormous patronage of the General Government.

In October, 1802, he outlined his policy to his Attorney General, as follows:

Every officer of the Government may vote at elections according to his conscience; but we should betray the cause committed to our care were we to permit the influence of official patronage to be used to overthrow that cause.

Shortly afterwards the following circular was issued by the heads of the Executive Departments:

The President of the United States has seen, with dissatisfaction, officers of the General Government taking on various occasions active parts in elections of the public functionaries, whether of the General or of the State Governments. Freedom of elections being essential to the mutual independence of governments and of the different branches of the same Government, so vitally cherished by most of our constitutions, it is deemed improper for officers depending on the Executive of the Union to attempt to control or influence the free exercise of the elective right. This, I am instructed, therefore, to notify to all officers within my Department holding their appointments under the authority of the President directly and to desire them to notify to all subordinate to them. The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it.

On March 20, 1841, during the administration of President W. H. Harrison, the following circular was issued by Hon. Daniel Webster, Secretary of State:

The President is of opinion that it is a great abuse to bring the patronage of the General Government into conflict with the freedom of elections, and that this abuse ought to be corrected wherever it may have been permitted to exist and to be prevented for the future.

He therefore directs that information be given to all officers and agents in your Department of the public service that partisan interference in popular elections, whether of State officers or officers of this Government, and for whomsoever or against whomsoever it may be exercised, or the payment of any contribution or assessment on salaries, or official compensation for party-election purposes will be regarded by him as cause of removal.

It is not intended that any officer shall be restrained in the free and proper expression and maintenance of his opinions respecting public men or public measures or in the exercise to the fullest degree of the constitutional right of suffrage. But persons employed under the Government and paid for their services out of the Public Treasury are not expected to take an active or officious part in attempts to influence the minds or votes of others, such conduct being deemed inconsistent with the spirit of the Constitution and the duties of public agents acting under it; and the President is resolved, so far as depends upon him, that while the exercise of the elective franchise by the people shall be free from undue influence of official station and authority opinion shall also be free among the officers and agents of the Government.

On July 14, 1886, the following warning was addressed "To the heads of Departments in the service of the General Government" by President Cleveland:

I deem this a proper time to especially warn all subordinates in the several Departments and all officeholders under the General Government against the use of their official positions in attempts to control political movements in their localities.

Officeholders are the agents of the people, not their masters. Not only is their time and labor due to the Government, but they should scrupulously avoid, in their political action as well as in the discharge of their official duties, offending by display of obtrusive partisanship their neighbors who have relations with them as public officials.

They should also constantly remember that their party friends from whom they have received preferment have not invested them with the power of arbitrarily managing their political affairs. They have no right as officeholders to dictate the political action of their party associates or to throttle freedom of action within party lines by methods and practices which pervert every useful and justifiable purpose of party organization. The influence of Federal officeholders should not be felt in the manipulation of political primary meetings and nominating conventions. The use by these officials of their positions to compass their selection as delegates to political conventions is indecent and unfair, and proper regard for the proprieties and requirements of official place will also prevent their assuming the active conduct of political campaigns.

Individual interest and activity in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges, but their privileges are not enlarged nor is their duty to party increased to pernicious activity by office holding.

A just discrimination in this regard between the things a citizen may properly do and the purposes for which a public office should not be used is easy, in the light of a correct appreciation of the relation between the people and those intrusted with official place and the consideration of the necessity under our form of government of political action free from official coercion.

You are requested to communicate the substance of these views to those for whose guidance they are intended.

35. President's letter of June 13, 1902.—Under date of June 5, 1902, the Commission addressed a letter to the President in which it called attention to the omission in the new postal regulations, issued April 1, 1902, of former section 435, providing that—

Officeholders should not offend by obtrusive partisanship, nor assume the active conduct of political campaigns. * * * This is in consonance with the order of President Cleveland of July 14, 1886.

The Commission also called the President's attention to the following statement in its Eleventh Report:

The Commission feels strongly that whatever rule is adopted should apply equally to adherents of all parties, and that it would be safe to adopt as such a rule the requirement that the adherents of the party in power shall never do what would cause friction in the office and subvert discipline if done by the opponents of the party in power. A man in the classified service has the entire right to vote as he pleases and to express privately his opinions on all political subjects, but he should not take any active part in political management or in political campaigns, for precisely the same reasons that a judge, an Army officer, a regular soldier, or a policeman is debarred from taking such active part. It is no hardship to a man to require this It leaves him free to vote, think, and speak privately as he chooses, but it prevents him, while in the service of the whole public, from turning his official position to the benefit of one of the parties into which that whole public is divided; and in no other way can this be prevented

The Commission recommended either that a general Executive order upon the subject be issued by the President or that recommendations be made to the heads of Departments for the establishment of regulations similar to the post-office regulation which had been omitted.

The following reply was received under date of June 13, 1902:

GENTLEMEN: As the greater includes the less, and as the Executive order of President Cleveland of July 14, 1886, is still in force, I hardly think it will be necessary again to change the postal regulations.

The trouble, of course, comes in the interpretation of this Executive order of President Cleveland. After 16 years' experience it has been found impossible to formulate in precise language any general construction which shall not work either absurdity or injustice. Each case must be decided on its merits. For instance, it is obviously unwise to apply the same rule to the head of a big city Federal office, who may by his actions coerce hundreds of employees, as to a fourth-class postmaster in a small village who has no employees to coerce and who simply wishes to continue to act with reference to his neighbors as he always has acted.

As Civil Service Commissioner under Presidents Harrison and Cleveland I found it so impossible satisfactorily to formulate and decide upon questions involved in these matters of so-called pernicious activity by officeholders in politics that in the Eleventh Report of the Commission I personally drew up the paragraph which you quote. This paragraph was drawn with a view of making a sharp line between the activity allowed to public servants within the classified service and those without the classified service. The latter under our system are, as a rule, chosen largely with reference to political considerations, and, as a rule, are and expect to be changed with the change of parties. In the classified service, however, the choice is made without reference to political considerations and the tenure of office is unaffected by the change of parties. Under these circumstances it is obvious that different standpoints of conduct apply to the two cases *In consideration of fixity of tenure and of appointment in no way due to political considerations, the man in the classified service,* while retaining his right to vote as he pleases and to express privately his opinions on all political subjects, "*should not take any active part in political management or in political campaigns,* for precisely the same reasons that a judge, an Army officer, a regular soldier, or a policeman is debarred from taking such active part." This, of course, applies even more strongly to any conduct on the part of such employee so prejudicial to good discipline as is implied in a public attack on his or her superior officers, or other conduct liable to cause scandal.

It seemed to me at the time, and I still think, that the line thus drawn was wise and proper. After my experience under two Presidents—one of my own political faith and one not—I had become convinced that it was undesirable and impossible to lay down a rule for public officers not in the classified service which should limit their political

activity as strictly as we could rightly and properly limit the activity of those in whose choice and retention the element of political considerations did not enter; and afterwards I became convinced that in its actual construction, if there was any pretense of applying it impartially, it inevitably worked unevenly, and, as a matter of fact, inevitably produced an impression of hyprocrisy in those who asserted that it worked evenly. *Officeholders must not use their offices to control political movements, must not neglect their public duties, must not cause public scandal by their activity;* but outside of the classified service the effort to go further than this had failed so signally at the time when the Eleventh Report, which you have quoted, was written, and its unwisdom had been so thoroughly demonstrated that I felt it necessary to try to draw the distinction therein indicated.

Sincerely, yours, THEODORE ROOSEVELT.

36. Enforcement of restrictions.—The Executive order of January 17, 1873 (see paragraph 18 et seq.), applies to incumbents of unclassified and excepted, as well as competitive, positions. Its interpretation and enforcement, so far as unclassified and excepted officers and employees are concerned, pertains to the several Departments. Many of the States have constitutional or statutory inhibitions against the holding of certain or all State, county, or municipal offices by any person holding an office of profit, honor, or trust under the United States, and the local statutes and decisions should be consulted. The practice of some of the Departments with respect to the political activity of incumbents of unclassified and excepted offices and the holding of local office by such persons is stated below.

37. Department of State.—In an order of October 1, 1904, the Secretary of State said:

> Officers and employees of this Department * * * are prohibited from such active participation in campaign work as is incompatible with their official duties. They should not serve on committees charged with the collection and disbursement of political funds, but they are free to vote and, in a proper way, to express their political sentiments and preferences.

38. Treasury Department.—In an order of the Commissioner of Internal Revenue, dated December 9, 1905, addressed to collectors of internal revenue, the Commissioner said:

> By reason of the fact that political parties are frequently, often necessarily, engaged more or less in the collection of money for political purposes, and in such work often secure contributions from persons in the Federal service, it is not deemed wise for collectors or their deputies to be members of local political committees.

39. Department of Justice.—The Attorney General, in an order dated November 22, 1901, addressed to all officers and employees of the Department of Justice, said:

> The spirit of the civil-service law and rules renders it highly undesirable for Federal officers and employees to take an active part in political conventions or in the direction of other parts of political machinery. Persons in the Government service under this Department should not act as chairmen of political organizations nor make themselves unduly prominent in local political matters.

40. Post Office Department.—The Postmaster General, in an order issued October 1, 1902, said:

> As to political activity, a sharp line is drawn between those in the classified and those in the unclassified service. Postmasters or others holding unclassified positions are simply prohibited from using their offices to control political movements, from neglecting their duties, and from causing public scandal by their political activity.

In a letter of November 20, 1906, the Postmaster General said:

> It is not the practice of this department to prohibit postmasters from holding positions as members of political committees, but it does prohibit them from serving in the capacity of officers of such committees.

41. Navy Department.—In the Navy Department there have been cases where the holding of a municipal office in conjunction with a Federal office has been permitted, precautions being taken that the interests of the public service are not infringed. (See paragraph 25.)

42. Department of the Interior.—In this Department there is a general observance of the Executive order of January 17, 1873, the opinion being held that a reasonable discretion is left to the heads of Departments in determining individual cases. It is preferred by the Department that its employees do not hold dual offices in order that their undivided attention may be given to departmental duties. (See paragraph 21.)

43. Department of Agriculture.—The cooperation of State officials is considered essential in eradicating contagious diseases of domestic animals, the gathering of statistics in relation to agricultural products, and in connection with various experimental works. The Department of Agriculture avails itself of

the services of State officers occupying positions in State agricultural colleges and experiment stations—as a general rule of no political significance. The official connection of these officers with State institutions places them in a position to be of greater value to the Department than employees not so connected. The Department considers both itself and the State institutions to be benefited by the cooperation of these employees and believes the holding of such State offices not to be incompatible with the position they hold under the Federal Government. (See paragraph 23.)

III. POLITICAL ASSESSMENTS.

44. SOLICITATION OR RECEIPT OF POLITICAL CONTRIBUTIONS BY ONE EMPLOYEE FROM ANOTHER.—Section 118, Criminal Code (35 Stat., 1110), provides:

"No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States."

45. Constitutionality of laws prohibiting assessments.—This section of the Criminal Code, in effect January 1, 1910, superseded section 11 of the civil-service act of January 16, 1883 (22 Stat., 403), which in turn was based upon section 6 of the act of August 15, 1876 (19 Stat., 143; 1 Sup. R. S., 245). The following is an extract from the opinion of the Supreme Court in Ex Parte Curtis (106 U. S., 371), as to the constitutionality of the last-named statute:

> A feeling of independence under the law conduces to faithful public service, and nothing tends more to take away this feeling than a dread of dismissal. If contributions from those in public employment may be solicited by others in official authority, it is easy to see that what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the power of removal as a breach of some supposed duty, growing out of the political relations of the parties. Contributions secured under such circumstances will quite as likely be made to avoid the consequences of the personal displeasure of a superior as to promote the political views of the contributor—to avoid a discharge from service more than to exercise a political privilege.
>
> The law contemplates no restrictions upon either giving or receiving except so far as may be necessary to protect, in some degree, those in the public service against exactions through fear of personal loss. * * * If it was constitutional to prohibit the act, the kind or degree of punishment to be inflicted for disregarding the prohibition is clearly within the discretion of Congress, provided it be not cruel or unusual.
>
> If there were no other reasons for legislation of this character than such as relate to the protection of those in the public service against unjust exactions, its constitutionality would, in our opinion, be clear; but there are others, to our minds, equally good. If persons in public employ may be called on by those in authority to contribute from their personal income to the expenses of political campaigns, and a refusal may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in. So, too, if a part of the compensation received for public services must be contributed for political purposes, it is easy to see that an increase of compensation may be required to provide the means to make the contribution, and that in this way the Government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have, for the time being, the control of the public patronage. Political parties must almost necessarily exist under a republican form of government, and when public employment depends, to any considerable extent, on party success, those in office will naturally be desirous of keeping the party to which they belong in power. The statute we are now considering does not interfere with this. The apparent end of Congress will be accomplished if it prevents those in power from requiring help for such purposes as a condition to continued employment.
>
> We deem it unnecessary to pursue the subject further. In our opinion the statute under which the petitioner was convicted is constitutional. * * *

46. Circulars of solicitation bearing names of Federal employees.—In an opinion of October 17, 1902 (24 Op., 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the civil-service act (now section 118 of the Criminal Code), which

declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

47. Sufficiency of indictments.—The following are extracts from the decision in United States *v.* Scott (74 Fed., 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

> To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution for a political purpose, by implication charges that the reception was for the same purpose as the contribution. * * * Nor was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

48. Membership on or services for political committees.—Any officer or employee of the United States who is a member of a political committee which solicits or receives political contributions from another officer or employee is "concerned in soliciting or receiving" within the meaning of this section, as is also an officer or employee who makes or furnishes a list of Government employees to a political committee for use in soliciting political contributions from them.

In an opinion of January 25, 1896 (21 Op., 298), the Attorney General held that a disbursing agent of the Government who honored an order of another person to pay a portion of his salary to a person not in the service in aid of a political fund, knowing the purpose of such payment, did not violate the law, stating:

> Bellman's action must therefore be judged by section 11 alone. I can not see how it can fairly be said that it was a violation of the provisions of this section. It is admitted that he did not solicit the contribution. Nor can it be said, in any proper sense of the term, that he received it. He physically took the money from the package, but he did so merely as the agent of the owner, and so long as it remained in his possession he held it as the agent of the owner, who had a right at any time to revoke his order and reclaim the money. This right continued until Bellman actually handed the money over to the third person, who alone can be said to have received it. When he received it it was from the secret agent in Chicago by the hand of Bellman and not from Bellman. He was accountable to the agent in Chicago and not to Bellman for its use or misuse. Bellman had no more to do with the transaction than a mere messenger would have had to whom the owner had handed it for delivery. The receipt of money, etc., intended by the statute is acceptance of possession which confers a right of disposal, not possession which simply constitutes the taker a mere custodian without right on his own behalf or that of others.
>
> The phrase "in any manner concerned in soliciting or receiving" was intended to cover evasions of the purpose of the statute and to punish all persons for whom or on whose behalf or at whose instance the person actually receiving the money is acting. Your statement excludes all relation whatever on the part of Bellman to the transaction other than the mere physical one which I have already described. In my opinion he was not guilty of either receiving or being concerned in receiving a contribution for a political purpose within the meaning of the act in question.

In the case of United States *v.* Dutro, May T., 1913, Western District of Tennessee, unreported, the same defense was interposed, and, upon motion for directed verdict for defendant, the following decision was rendered by McCall, J.:

> I have given all the time counsel cared to consume in the discussion of this motion for a directed verdict, because I gathered from what had been said that it was practically determinative of the case.
>
> The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.
>
> There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.
>
> Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.
>
> This evidence (which so far is uncontradicted), shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits.

Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions and purely as a personal matter, but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions, or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word concerned means to be interested in, or take part in receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the contributions being made by employees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

Entertaining these views, upon the motion as now made, I think it should be overruled.

The following is an extract from the court's charge to the jury in the same case:

I charge you the law to be that if Mr. Dutro received the contribution while he was postmaster at Memphis, Tenn., from Mr. Roberts, a clerk or appointee in the post office at Memphis, Tenn., and he received it for political purposes—that is, it was to be used in the interest of a political campaign—and Mr. Dutro knew that was the purpose of the contribution, then he would be guilty under this statute of having received a contribution for political purposes, while postmaster—that is, an officer of the United States Government—from an employee and clerk in the service of the United States Post Office Department. And if he took the contribution and conveyed it to the place for which it was intended—that is, the political campaign committee of the Republican Party—then he had not only received it in violation of law, but under the first count in the indictment he would be guilty of being concerned in receiving funds for campaign purposes within the prohibition of the law.

What I have just said in regard to the transaction between the defendant and Mr. Roberts, as charged in the first and second counts, is also applicable to the transaction between the defendant and Miss Baker, as charged in the third and fourth counts, and need not be repeated.

* * * * * * *

You may find that he received them, then he would be guilty under the counts charging him with receiving them; or you may find that he did not receive them, then he would not be guilty under those counts charging him with receiving them; but under the law as I charge it to you, if he received them knowingly, and they were delivered by him or used by him for political purposes, then he would also be concerned in receiving them, and he would be guilty under those counts in the indictment.

The jury returned a verdict of guilty on all four counts of the indictment. The decision and charge above quoted overrule the opinion of the Attorney General of January 25, 1896, so far as it may be urged as a defense in cases of this sort, and the principle appears to be definitely established that a defendant may no longer escape punishment by alleging that he received a political contribution as a mere agent or messenger for the purpose of turning it over to a political organization.

49. SOLICITATION OR RECEIPT OF POLITICAL CONTRIBUTIONS IN FEDERAL BUILDINGS.—Section 119, Criminal Code (a reenactment of section 12 of the civil-service act), provides as follows:

"No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever."

50. Constitutionality.—This portion of the civil-service act was held to be constitutional in United States *v.* Newton (9 Mackey (D. C.), 226, 19 Wash. L. R. 770), from the decision in which case the following is an extract:

The Government of the United States has supreme and exclusive control over the places designated in section 12 in which solicitation of, or procuring aid for, political purposes is forbidden.

The United States does not share control with a State or municipality, but has control over those places which have been acquired by it in pursuance of authority granted to it by the Constitution and laws of the United States for the exclusive use and purposes of the Government.

Congress has a right to prescribe rules of conduct to be observed not only by officers and employees of the Government who shall occupy these places for the time being, but also by the citizen who may for any purpose be allowed to go into these places, it may be on business with the Government, or recreation, as suggested by defendant's counsel. The Government has the right, we think, to prescribe what shall be the conduct of persons thus visiting these places by the enactment of reasonable rules and regulations. Con-

ceding all that counsel claims for the purity of motives actuating partisans in securing contributions for and promoting the success of political parties, we do not perceive the harm, hardship, or oppression resulting from a law which prohibits this solicitation in the places where the business of the Government is transacted. While it may be easy to conceive of instances where such solicitation by one citizen of another would not work harm, such a practice if permitted might be seriously detrimental to the public service. Whether or not at the date of the enactment of this statute the best interests of the country required such legislation was a matter peculiarly within the province of Congress to determine. It is not for the courts to decide the act or any part of it unconstitutional because it may doubt the necessity of the enactment or the wisdom of its provisions.

* * * * * * *

We hold the indictment to be good and the twelfth section of the act constitutional.

In United States *v.* Huffman (Nov. T., 1905, District of Indiana, unreported), which was a prosecution for soliciting funds in a post office, a demurrer was interposed on the ground that the law was unconstitutional if held to apply to buildings simply leased from a State by the United States Government and over which the State still exercised a landlord's control; the demurrer was overruled. (See also United States *v.* Elliott, April T., 1907, Northern District of Illinois, unreported, which was a prosecution for soliciting funds in a distillery where storekeepers and gaugers were stationed in the performance of official duty: United States *v.* Thayer, 209 U. S., 39, and United States *v.* Glick, June, 1909, District of Delaware, unreported, the lengthy decision in which, fully upholding the constitutionality of the section under discussion, is printed in the Commission's 26th Report, beginning on p. 159.)

51. Letters addressed to Federal buildings.—The Commission by a minute adopted March 23, 1897, held that addressing a letter to a Government employee in a Government building soliciting political contributions is a solicitation in that building within the meaning of section 12 of the civil-service act, and in this opinion was sustained by the advice of eminent counsel (see 14th Report, pp. 147–155), but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Tex. A demurrer was interposed to the indictment and was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (United States *v.* Thayer, 209 U. S., 39.) The opinion of the court, which was delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also United States *v.* Smith, 163 Fed., 926, where the letter was personally delivered.)

52. Letters delivered in Federal buildings.—The Commission holds that the sending through the mails of letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes, with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, constitutes a violation of this section. It is a maxim of the law that a person is presumed to intend the natural and reasonable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution. One such prosecution has been had, but sufficient evidence was adduced to convince the jury that there was no intent to violate the law, and the defendants were acquitted.

53. DISCRIMINATION ON ACCOUNT OF POLITICAL CONTRIBUTIONS.—Section 120, Criminal Code (a reenactment of sec. 13 of the civil-service act), provides as follows:

"No officer or employee of the United States mentioned in section one hundred and eighteen shall discharge or promote or degrade or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose."

54. PAYMENT OF POLITICAL CONTRIBUTIONS BY ONE EMPLOYEE TO ANOTHER.—Section 121, Criminal Code (a reenactment of sec. 14 of the civil-service act), provides that—

"No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk,

or person in the service of the United States, or to any Senator or Member of or Delegate to Congress or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever."

55. PENALTIES FOR ASSESSMENTS.—Section 122 of the Criminal Code provides as follows:

"Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars or imprisoned not more than three years, or both."

56. ABOVE OFFENSES ARE FELONIES.—By section 15 of the civil-service act it was declared that persons violating any provision of the four preceding sections should be guilty of a misdemeanor, but this section is now superseded by section 122 of the Criminal Code, above quoted, which makes such violation a felony, in view of the following provision of section 335 of the Criminal Code:

"All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors."

IV. POLITICAL COERCION.

57. CIVIL-SERVICE ACT AND RULE.—Section 2, clause second, of the civil-service act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section civil-service Rule I, section 1, provides, in part, that "No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, unclassified as well as classified.

V. POLITICAL DISCRIMINATION.

58. FAILURE TO CONTRIBUTE OR RENDER POLITICAL SERVICE NOT PREJUDICIAL.—Section 2, clause second, of the act also provides:

"Fifth. That no person in the public service is for that reason under any obligations to contribute to any political fund or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so."

59. POLITICAL OPINIONS AND AFFILIATIONS.—Section 2 of Rule I provides as follows:

"No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations."

60. Definition of discrimination.—Political discrimination consists in giving appointment, promotion, or any other favor to an appointee, eligible, or candidate because of his politics, or withholding appointment, promotion, or any other favor from an appointee, eligible, or candidate because of his politics. An appointing officer who appoints or refuses to appoint an applicant because the applicant does or does not entertain certain political opinions, who makes any inquiry of the applicant or any other person as to the applicant's political opinions or affiliations, or reduces an employee because that employee refuses to render political service, to be coerced in political action, or to contribute money for political purposes, or who advances or promotes an employee for opposite reasons, violates the civil-service act and rules.

61. Wholesale removals.—The removal of a large number of employees of the same political faith from an office will be presumed to have been made for

political reasons, and the burden is upon the officer making the removals to show that just cause existed for making each such removal.

62. Incumbents of excepted positions.—All positions excepted from examination under Schedule A of the rules are within the classified service, and, under section 2 of the civil-service act and section 2 of Rule I, no removal may be made from such positions for political reasons. While under section 2 of the civil-service act positions within the classified service may be excepted from the requirement of examination, they are not excepted from the separate prohibition therein of removal for political reasons. The President, in the civil-service rules, has recognized this construction of the act and carried out its provisions by forbidding changes in the classified service, including excepted places, for political reasons.

VI. POLITICAL RECOMMENDATIONS.

63. SENATORS AND REPRESENTATIVES.—Section 10 of the civil-service act provides:

"That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act."

64. DISCLOSING POLITICS.—Rule I, section 3, provides as follows:

"No recommendation of an applicant, eligible, or employee in the competitive service involving a disclosure of his political or religious opinions or affiliations shall be considered or filed by the Commission or any officer concerned in making appointments or promotions."

65. Letters disclosing politics or religion not to be considered.—It is the duty of officers concerned in making appointments or promotions to refuse to receive or consider letters disclosing the politics or religion of an applicant, eligible, or employee and to explain to the writers that communications based upon such grounds will not receive attention or be filed.

66. RECOMMENDATIONS FOR PROMOTION.—Rule XI, section 3, provides that:

"No recommendation for the promotion of a classified employee shall be considered by any officer concerned in making promotions, unless it be made by the person under whose supervision such employee has served; and such recommendation by any other person, if made with the knowledge and consent of the employee, shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service."

VII. RURAL CARRIERS.

67. Executive order of December 30, 1911:

Hereafter paragraphs (*a*) and (*b*) of section 1 of civil-service Rule VII shall apply to the appointment of rural carriers, and three eligibles shall be certified by the Civil Service Commission.

In all cases selections shall be made with sole reference to merit and fitness and without regard to political considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any eligible, and no recommendation in any way based thereon shall be received, considered, or filed by any officer concerned in making selections or appointments. Any such recommendation, in writing, forwarded to any such officer shall be at once returned to the writer, with attention invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the commission shall make prompt report of any such case for appropriate action to the Postmaster General, or, as to presidential appointees, to the President. The appointment of the rural carrier concerned, if effected, shall be canceled.

Persons employed as rural carriers, while retaining the right to vote as they please and to express their opinion privately on all political subjects, shall take no active part in political management or in political campaigns. Any rural carrier taking such part shall be removed from the service or otherwise disciplined, recommendation as to the penalty to be imposed in each case to be made by the Civil Service Commission.

Paragraphs (*a*) and (*b*) of section 1 of civil-service Rule VII refer to the manner of certification of eligibles.

VIII. FOURTH-CLASS POSTMASTERS.

68. Extract from regulations approved by the President November 25, 1912:

In all cases selection for appointment shall be made with sole reference to merit and fitness and without regard to political or religious considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any applicant or eligible, and in conformity with section 10 of the civil-service act no recommendation in any way based thereon shall be received or considered by any officer concerned in making selections or appointments. The attention of the writer of any such recommendation shall be invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the Civil Service Commission shall make prompt report of any such case for appropriate action to the Postmaster General or, as to presidential appointees, to the President. The appointment of the fourth-class postmaster concerned, if effected, shall be canceled. Persons employed as postmasters of the fourth class, while retaining the right to vote as they please and to express their opinions privately on all political subjects, shall take no active part in political management or in political campaigns. Any such postmaster taking such part shall be removed from the service or otherwise disciplined, recommendation as to the penalty to be imposed in each case to be made by the Civil Service Commission. This section shall apply to all offices of the fourth class of whatever compensation.

IX. ATTEMPTS TO INFLUENCE LEGISLATION.

69. Executive order of April 8, 1912.—The first amendment of the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion; or prohibit the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The matter of attempts by Government employees to influence legislation has been the subject of a number of Executive orders (see 29th Report of Commission, p. 21), the last of which is dated April 8, 1912, and reads as follows:

It is hereby ordered that petitions or other communications regarding public business addressed to the Cougress or either House or any committee or Member thereof by officers or employees in the civil service of the United States shall be transmitted through the heads of their respective Departments or offices, who shall forward them without delay with such comment as they may deem requisite in the public interest. Officers and employees are strictly prohibited, either directly or indirectly, from attempting to secure legislation or to influence pending legislation, except in the manner above prescribed.

This order supersedes the Executive orders of January 31, 1902, January 25, 1906, and November 26, 1909, regarding the same general matter.

The Executive orders which were superseded by this order were criticized as being too stringent and an invasion of constitutional rights, and in section 6 of the act of August 24, 1912 (37 Stat., 555), it was provided that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with."

The Executive orders previously mentioned did not attempt to nullify the right to petition the Government guaranteed by the Constitution, but simply specified the procedure to be followed by executive employees of the Government in exercising that right, and the order of April 8, 1912, fully preserves the rights of employees to petition the Government.

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